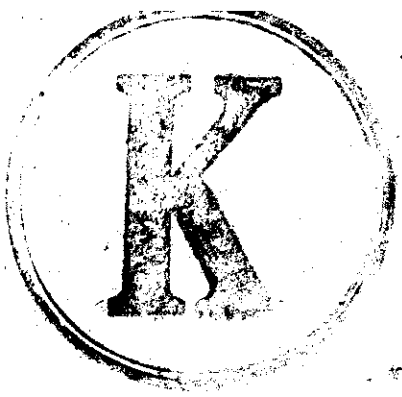

1952.

File No. Bills/1952

Legal Deptt.

B. **BRANCH**

paid

Subject:— L. D

Volume No Bills

1952

L D.

File No. Bills/1952,

Gen. 194 e.

Legal Department.

Section 2 of the Bombay Ministers' Salaries Act, 1937, provides for payment to the Prime Minister and each of the Other Ministers of the Government of Bombay of an allowance for the maintenance of motor car at the rate of Rs. 200 per month. The Act does not define the items of expenditure which are included in the expression "maintenance of motor car". According to the ordinary meaning the word "maintenance" means action of keeping in effective condition. It appears from the Secretary, Finance Department's note of 15.10.1937 in Political and Services Dept. file No. 9728/34/-I that the understanding was that the maintenance should include running charges, such as salary of chauffeur, petrol oil and small accessories for keeping the car in proper condition such as cotton waste and polishing cloth, petty repairs and replacement of small parts such as bulbs and tubes. The word "maintenance" would not ordinarily include repairs, and, therefore it was then understood that it should not include replacement of major parts heavy repairs and additions to the car.

This view finds support from the Government of India (Governors' Allowances and Privileges) Order 1950. That Order defines "maintenance" as including in relation to motor cars the pay and allowances of chauffeurs and the provision of petrol. It can, therefore, be held that the expression "maintenance of motr car" used in the Bombay Ministers' Salaries Act 1937, includes expenditure incurred on account of the salary and allowances of a chaufeur and petrol. Attention in this connection is invited to the following observ-ations made by the Honourable Chief Minister on the floor of the Legislative Assembly on 23rd August 1937 (vide p.278 of B.L.A. Debated), namely:-

" The cars have been purchased by Government and though they are placed at the disposal of the Ministers or they remain the property of the State. For running the motor cars in allowances is proposed to be paid, as the honourable member will see from sub-clause (c) of clause 2 of the Bill.

The Honourable Chief Minister also stated in the Council on 17.9.1937 (vide p. 160 B.L.C. Debates), as follows namely:-

" The motor allowances of Rs. 150/- which is intended to cover the pay of the chauffeur and other incidental expensive is not a matter which can be considered as extravagant."

For these reasons it will be possible to hold that the maintenance of motor car includes only the charges on account of the salary of the chauffeur and petrol. In this view Government can legitimately bear expenditure for all repairs. No amendment of the Ministers' Salaries Act would thus be necessary.

Sd. J.R.Dhurandhar.
22/4.

Additional Secretary to Government.

U.R. to P.&.S.D. No. 5374, dated the 20th April 1950.

VGP. 3-7-56.

The Honourable Chief Minister also stated in the Council on 17.9.1937 (vide p. 160 B.L.C. Debates), as follows namely:-

" The motorallowances of Rs. 150/- which is in tended to cover the pay of the chauffeur and other incfiental expensive is not a matter which can be considered a s extravagant."

For these reasons it will be possible to hold that the maintenance of motor car includes only the charges on account of the salary of t he chauffeur and petrol. In this view Government can legitimately bear expenditure for all repairs. No amendment of the Ministers' Salaries Act would thus be necessary.

Sd. J.R.Dhurandhar.
22/4.

Additional Secretary t o Government.

U.R. to P.&.S.D. No. 5374, d ated the 20th April 1950.

VGP. 3-7-56.

The only course possible to provide for the allowances of Hon'ble Ministers is to promote legialtions. The provisions of clause (5) of Article 164 of the Constitution leave No. other alternative open.

Sd. J.R.Dhurandhar.
20/7

Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 712-Confl dated the 21st July 1951.

VGP. 3-7-56.

 Office of the R.L.A.

A requisite draft will Bill is sent herewith. Clause 4 of the draft Bill is intended to keep in force all the existing rules and orders ~~xxxxxxxxx~~ issued by Government on the subject. Such rules and orders need not be reproduced in the Act. Clause 3 is intended to enable Government to amend the existing rules and orders or to make new rules or orders governing the daily and travelling allowances of the Ministers.

2. The subject- matter of the Bill falls under entry 40 in List II in the Seventh Schedule to the Constitution of India. The Bill does not require any sanction. It requires the Governor's recommendation under article 207(3) (3).

3. The salaries and allowances of the Ministers is a subject allotted to the Political and Services Department but the subject "Salaries and allowance of the Speaker and Deputy Speaker of the Legislative Assembly and of the Chairman and Deputy Chairman of the Legislative Council" is allotted to the Legal Department. If Government decides to undertake the proposed legislation this Department may be informed so that necessary action to promote similar legislation for determinign the salaries and allowances of the presiding officers of the State Legislature may be taken by this Department in good time.

Sd. J.R.Dhurandhar.
18/9

Remembrancer of Legal Affairs.

U.R. to P. S.D. No. 157-L dated the 14th September 1951.

VGP. 3-7-56.

Under the Second Schedule to the Constitution, as pointed out by F.D. , a minister is entitled to receive such salaries and allowances as he may be receiving immediately before the commencement of the Constitution. The Government of India Act, 1935 provided for allowances to the salaries of a minister. It did not require any provision for be included in the Salaries Act made under section 51 of that Act. Such allowances before 26 January 1950 could be granted even by executive orders. This point was considered in 1937, when the Ministers Salaries Act was passed. As suggested by F.D. all advantages whether in cash or otherwise received by ministers are included in the draft Bill. The rates of salaries and allowances are not, however, included but have been left blank. As discussed with Secretary, F.D. no retrospective effect is being given to any of the provisions of the Bill. If that is so, the Bill will really apply to the salaries and allowances of ministers who will be appointed after the election. In that case, it will be necessary for P.&.S.D. to consider whether it is necessary to introduce this Bill in the next session of the Legislature which will be the last session of the present Houses.

Sd. J.R.Dhurandhar.
25/10.

Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 900-Confl dated the 25th October 1951.

VGP. 3-7-56.

H.C.M. and H.M.(H.D.) have directed that a Bill should be drafted for the purpose of facilitating the appointment of Deputy Ministers. The Union Government follows the system of appointing Deputy Ministers and Ministers of States. The question regarding the legal status of Deputy Ministers and Ministers of States was discussed in the Parliament when the Parliament (Prevention of Disqualification) Act, 1950, was under consideration.

There is no express mention in the Constitution regarding Deputy Ministers and Ministers of States either at the Centre or in the States. Hon'ble the Prime Minister stated that they belong to the Council of Ministers. The Law Minister (Dr. Ambedkar) accepted that in law the question was not free from doubt. The law Ministry of the Government of India was addressed in the meantime and it appears that the Ministry is now inclined to the view that, meaning of the Constitution and do not become disqualified from being the members of the Legislature by reason of their appointment as Deputy Ministers. But this opinion is opposed to the view expressed by the Law Minister on the floor of the House and is not consistent with the Acts which are on the Statute Book of the Parliament. The enactments passed by the Central Legislature in which reference occurs to, and provision has been made, regarding Deputy Ministers are :-

(1) The Ministers Salaries Act, 1947, as amended by Act LIX of 1951, and

(2) The Parliament (Prevention of Disqualification) Act, 1950.

Inspite of the opinion expressed by the Law Ministry, so long as the Parliament (Prevention of Disqualification) Act, 1950, mentioning Deputy Ministers is on the Statute Book, it would be held that Deputy Ministers would be disqualified unless an express enactment is made removing their disqualification. The safer course would be to provide by an enactment that they are not disqualified. The appended draft Bill follows the above Acts.

It provides for -

(i) the salaries and allowances of Deputy Ministers,

(ii) provision for their free residence,

(iii) their exemption from being disqualified to continue to be the members of the Legislature.

On the lines of the Bombay Ministers Salaries Act it is also provided that so long as they hold the office of Deputy Minister, they will not, in addition, draw their salary as the members of the Legislature. The Bill may be sent to F.D. for filling in the details regarding the amount of the salary and may then be submitted to the Cabinet. If the appointment of Deputy Ministers is to be made soon, it will be necessary to proceed with the Bill in the ensuring May session. It will have, therefore, to be published as early as possible,. The Bill is within the competence of the State Legislature. It falls under entry No. 40 or 41 in List II in the Seventh Schedule. . .

Schedule and under article 191 of the Constitution. It requires the recommendation of the Governor. It is not necessary to reserve it for the consideration of the President.

2. As Deputy Ministers will be entrusted with administrative functions, provision will have to be made in the Business Rules specifying therein their functions and the oaths of office and secrecy on the lines to be taken by Ministers will have to be administered to them. Although the question whether Deputy Ministers belong to the Council of Ministers is doubtful, the oaths of office and secrecy may be administered to them by the Governor under clause (3) of article 164, so that no question might arise at any time that they had not taken paths as required by the Constitution.

Sd. J.R.Dhurandhar.
19/4

VGP. 6-7-56.

Immediate
Confidential.

D.O.No. 365-Confl.

Legal Department,
Bombay Castle (Bombay No. 1), 15th April 1952.

The question of Deputy Ministers or Ministers of State who are to be members of the Council of Ministers is under consideration in Bombay. The Central Government has of course already started the practice both of Deputy Ministers and Ministers of State. The only two enactments of which we are aware in this connection are the Salaries of Ministers Act, 1947 (LIII fo 1947), as amended by the Salaries of Ministers (Amendment) Act, 1950 (LIX of 1950), and the Parliament (Prevention of Disqualification) Act, 1950 (XIX of 1950). In order to enable us to consider all aspects of the question, particularly with a view to framing suitable legislation, it might be of great use to us to know the manner in which you surmounted the constitutional difficulties, such as, whether the Deputy Ministers and Ministers of State are included in the term "Ministers" or whether they are regarded as holding political offices, whether oaths of allegiance and secrecy are administered to them and if so under what provision. I shall, therefore, feel highly obliged if you can kindly furnish me by return of post the copy of the advice which your Department may have tendered on this subject, or, if no formal advice was tendered, your views on the matter. Similarly, I would like to have a copy of the relevant portion of the Rules of Business pertaining to the Deputy Ministers and the Ministers of State defining their functions and duties.

Sd. P.M.Lad.

Shri K.V.K.Sundaram I.C.S.,
Secretary to the Govt of India,
Ministry of Law, NEW DELHI.

VOP. 6-7-56.

Immediate
Confidential. D.O.No.F.13(3)/52-C.

GOVERNMENT OF INDIA
MINISTRY OF LAW.

New Delhi, dated 16th April 1952.

My dear Lad,

Please refer to your D.O. letter No. 305-Confl., dated the 13th April 1952.

I send herewith for your personal information a copy of a note which I had prepared two weeks ago. I think this will answer all your questions. The Rules of Business at the Centre have not been finalized and so I am unable to give you the information you ask for in the last sentence of your letter.

Yours sincerely,

Sd. (K.V.K.Sundaram).

Shri P.M.Lad,
Legal Remembrancer,
Government of Bombay,
Bombay Castle,
Bombay No. 1.

Sd. P.M.Lad.
18/4

VGP. 6-7-56.

MINISTRY OF LAW.

Appointment of Deputy Ministers in the States.

...

It will be useful to recall in this connection the history of the Council of Ministers at the Centre. On the 15th August 1947, the Governor-General appointed fourteen persons to be members of his Council of Ministers. This was with reference to sections 9 and 10(1) of the Government of India Act, 1935, which as adapted for the Dominion of India read as follows:-

"9. There shall be a Council of Ministers to aid and advise the Governor-General in the exercise of his functions.

10(1). The Governor-General's Ministers shall be chosen and summoned by him, shall be sworn as members of the Council, and shall hold office during his pleasure."

The Salaries of Ministers Act, 1947, which came into force in 1-1-1948, provided for the salaries of those Ministers who were referred to in that Act as Ministers of the Dominion of India.

2. Subsequently certain persons were appointed from time to time by the Prime Minister as Ministers of State and Deputy Ministers, but they were not regarded (theoretically at any rate) as members of the Governor-General's Council of Ministers. Their salaries were regulated not by the Act of 1947, but by ad hoc Orders of the Government. The question of disqualification for being members of the Dominion Legislature on the score of their holding offices of profit under Government, however, did not arise because section 26 of the Government of India Act, 1935 (corresponding to article 102 of the Constitution) had been omitted in the course of adaptation.

3. When the new Constitution came into force, the status of Ministers of State and Deputy Ministers, as well

as the question of their disqualification under article 102 naturally came up for consideration. The view was taken that since they were not Ministers of the Dominion of India immediately before the commencement of the Constitution they did not automatically become members of the Council of Ministers of the President by cirtue of article 381 of the Constitution. Consxkxxxequently, Ordinance No. XII of 1950 was promugated on 26-1-1950 providing inter alia that a person shal not be disqualified for being a member of Parliament by reason only of his being a Minister of State or a Deputy Minister at the Centre. This Ordinance was later converted into the Parliament (Prevention of Disqualification) Act, 1950 which came into force on 11-3-1950.

4. This position was, however, regarded as not ever satisfaction and when it became necessary to reconstitute the opportunity was taken to alter the position so far as the Ministers of State were concerned. The public notification of 5th May 1950 in the following terms:-

"The President has been pleased to appoint Pandit Jawaharlal Nehru to be the Prime Minister and the following person to be the other Ministers:-

Cabinet Ministers

.. ..
.. ..

Ministers of State

.. ..
.. ..

Immediately below this notification appeared another reading as follows:-

"The Prime Minister has appointed the following person to be Deputy Ministers:-

.. ..
.. ..

5. Three months later, the matter was considered once again, and it was decided that it would be more fitting for the President to appoint the Deputy Ministers also, in the same way as he appointed Cabinet Ministers and Ministers of State so that all of them would be members of his Council of Ministers, although they would be of three different grades. In accordance with this decision three Deputy Ministers were appointed by the President on the 18th August 1950 and one more on the 23rd August 1950. The salaries of Ministers Act of 1947 was also amended by Act LIX of 1950 (22nd August 1950), giving Parliamentary recognition to the three categories of Ministers of State and Union, namely, Cabinet Ministers, Ministers of State and Deputy Ministers, and fixing the salaries of each category separately.

6. It will be noticed from the above that there is a clear distinction between the President's Council of Ministers and the Cabinet which the history and practice of the last five years has firmly established. While Ministers of State and Deputy Ministers are members of the Council of Ministers, theyare not memebrers of the Cabinet, and they attend meetings of the Cabinet only by special invitation and not as of right.

7. The problem of Deputy Ministers in the States should, it is suggested be solved on the same lines as those who have adopted at the Centre. (i) If in any State necessity is felt for the appointment of more than one grade of Ministers the best course would be for the Head of the State (Governor, Rajpramukh, Lieutenant Governor or Chief Commissioner) to make an Order on the lines set out in Paragraph 4 above, e.g.:-

"The Governor has been pleased to appoint Shri A, B to be the Chief Ministera nd the following persons to be the other Ministers:-

Cabinet Ministers.

.. ..
.. ..

Deputy Ministers.

.. ..
.. ..

(ii) Rules of Business should provide that only Cabine Ministers are entitled as of right to be present at Cabinet meeting and the other Ministers will attend only when specially invited.

(iii) There should be an Act of the State Legislature regulating the salaries and allowances of the two categories of Ministers separately.

(iv) There would, however, be no need for special legislation to prevent the Deputy Ministers incurring a disqualification since the form of appointment suggested above would itself make it clear that they are also Ministers and hence protected by Article 191(2) of the Constitution.

(v) The Deputy Ministers should also be sworn in by the Head of the State in the same way as the Cabinet Ministers and administered the prescribed oaths of office and of secrecy.

Sd/-K.V.K.Sundaram
29-3-1952
SECRETARY.

VGP. 6-7-56.

D.O.No.376-Confl.
Legal Department,
Bombay Castle (Bombay No. 1),
19th April 1952.

I am in receipt of your D.O.No.F. 13(3)/52-C. dated 16th April 1952. I thank you every much for your prompt reply. The note accompanying your letter is very useful for our purpose.

Sd/P.M.Lad.

Shri K.V.K.Sundaram, I.C.S.,
Secretary to the Govt. of India,
Ministry of Law, NEW DELHI.

VOP. 6-7-56.

H.C.M. and H.M.(H.D.) have directed that a Bill should be drafted for the purpose of facilifating the appointment of Deputy Ministers. The Union Government follows the system of appointing Deputy Ministers and Ministers of States. The question regarding the legal status of Deputy Ministers and Ministers of States was discussed in the Parliament when the Parliament (Prevention of Disqualification) Act, 1950, was under consideration.

There is no express mention in the Constitution regarding Deputy Ministers and Ministers of States either at the Centre or in the States. Hon'ble the Prime Minister stated that they belong to the Council of Ministers. The Law Minister (Dr. Ambedkar) accepted the above statement, but had to admit that in law the question was not free from doubt. The law Ministry of the Government of India was addressed in the meantime and it appears that the Ministry is now inclined to the view that Deputy Ministers are Ministers within the meaning of the Constitution and do not become disqualified from being the members of the Legislature by reason of their appointment as Deputy Ministers. But this opinion is opposed to the view expressed by the Law Miniters on the floor of the House and is not consistent with the Acts which are on the Statute Book of the Parliament. The enactments passed by the Central Legislature in which reference occurs to, and provision has been made, regarding Deputy Ministers are :-

In the Centre there are two enactments which refer to the Deputy Ministers (1) the Parliament Prevention of Disqualification Act, 1950, (2) the Ministers (Parliament) Salaries Act, 1947 as amended in 1950. Both the enactments refer to Deputy Ministers. During the discussion on the Parliament Prevention of Disqualification Act, 1950 the position in regard to Deputy Ministers was discussed. Attention in this connection is invited to Parliamentary Debates Vol. II No. 13 dated 10th March 1950. The following passages are relevant:

Shri Tyagi	p,1339
Prime Minister	p,1341
Shri Sidhva	p,1342
Dr. Ambedkar.	p,1344

Attention is also invited to the note of the Govt. of India, Ministry of Law at slip Z.

In England there are Ministers who are the members of the Cabinet, and there are also Ministers who are not in the Cabinet: See Ivor Jenning's Cabinet Government, Appendix II pp.504-505 In England the Parliament has passed what is known as Ministers of Crown Act, 1937. Schedule I to that Act contains Ministers who are Ministers of the Cabinet, while Schedule II specifies the Ministers who are not in the Cabinet.

It appears that in Canada also where the Constitution is written and governed by the North British America Act, there are Ministers within the Cabinet and outside the Cabinet; see Dawson's Govt. of Cannada, p.198 & 199.

J.R.Dhurandhar 6/8

Legal Department.

The object of thepresent Bill (No. VIII of 1952) is to fix the salaries and allowances of the Ministers who have assumed office on 21st April1952. It will be improper and inappropriate to insert therein provisions regarding the allowances paid to Ministers who vacated their office prior to the Assumption of office by the present Ministers. The position as regarding the allowances paidxtax of the Ministers and the President and the Speaker who have vacated their office has been explained in R.L.A.'s opinion No. 3705 dated 3rd March 1951, to which whi the attention of the Political and Services Department is drawn As explained in that opinion, it was possible to determine the travelling allowances of the Ministers and the President and the Speaker in the past by executive orders. Under clause (5) of Article 164 of the Constitution, the salaries and allowances of Ministers shall be such as the Legislative of the State may from time to time by law determineand, until the Legislature of the State so determines, shall be as specified in the Second Schedule. Paragraph 6 in PartB of the Second Schedule provides that Ministers for any State specified in Part A of the First Schedule shall be paid such salaries and allowancesas were payable to such Ministers for the corresponding Province immediately before the commencement of the Constitution. In virtue of these provisions the Ministers would beentitled to receive after 26th January 1950 the allowances payable to them before that date und under the executive orders. The allowances drawn by the Ministers between 26th January 1950 and 20the April 1952 were therefore, validly drawn by them and no action to validate them is necessary. Even assuming for the sake of argument that the above provisions do not validate any executive orders passed after 26th January 2950 , andpayments made in pursuance of the said orders can be held to have been authorised by the Appropriation and Supplementary Appropriation Acts passed from time to time. As stated by Secy. F.D. the matter may be left as it is. In any case no provision in regard to it can be inserted in the present Bill.

w.r.to P&S.D.No.7780/9-5-1952. Sd. J.R.Dhurandhar. 8/5. Addl Secy to the

Legal Department.

Bombay Castle, (Bombay No. 1) 10th May 1952.

From

Shri J.R.Dhurandhar,
Additional Secretary to the Government
of Bombay.

To

The Secretary to the Governor of Bombay,
Bombay.

Subject:- The Bombay Ministers' Salaries and
Allowances Bill, 1952.

.....

Sir,

With reference to article 200 of the Constitution of India I am directed to forward herewith for the assent of His Excellency the Governor the authentic copy of the Bombay Minister Salaries and Allowances Bill, 1952m which was read for the third time and passed at the meetings of the Bombay Legislative Assembly and the Bombay Legislative Council held on the 8th and the 9th May 1952 respectively.

2. The subject matter of the Bill falls under entry 40 in List II in the Seventh Schedule to the Constitution. As the Bill does not relate to any matter in the Concurrent Legislative List, it is not necessary to reserve the Bill for the consideration of the Presidentwith reference to article 25 (2) of the Constitution. It is also not necessary to reserve the Bill for the consideration of the President with reference to any other article of the Constitution.

3. The date on which His Ex ellency the Governor's assent is given may kindly be entered in the endorsement.

4. I also forward herewith one copy of each of the items

items Nos. 1, 2 and 4 and two copies of item No 3 pf

		the papers
1.	Bill as introduced in the Bombay Legislative Assembly with the Statement of Objects and Reasons.	noted in the margin
2.	Bill as read for the third time and passed by the Bombay Legislative Assembly and as introduced in the Bombay Legislature Council	The Bill was not
3.	Bill as read for the third time and passed by the Bombay Legislature Council.	referred to a Select
4.	Extracts from the proceedings of the Bombay Legislature Assembly dated the 7th and 8th May 1952 and of the Bombay Legislature Council dated the 9th May 1952.	Committee.

Yours faithfully,

Sd. J.R.Dhurandhar.
10/5

Additional Secretary to Government.

VGP. 3-7-56.

No. G.S. 1331.

FROM

THE SECRETARY TO THE GOVERNOR OF BOMBAY.

To.

The Additional Secretary to Government,

Legal Department.

Raj Bhavan,

BOMBAY. 6 May 10, 1952.

Subject: The Bombay Ministers' Salaries and Allowances Bill, 1952.

Sir,

With reference to your letter No. 7818 dated May 10, 1952, I am directed to return herewith the authentic copy of the Bombay Ministers' Salaries and Allowances Bill 1952, with His Excellancy the Governor's assent signified thereon.

Yours faithfully,

for Secretary to the Governor of Bombay.

VGP. 3-7-56.

 No. G.S. 1331.

FROM

THE SECRETARYT TO THE GOVERNOR OF BOMBAY.

To.

The Additional Secretary to Government,

Legal Department.

Raj Bhavan,

BOMBAY. 6 May 10, 1952.

Subject: The Bombay Ministers' Salaries and Allowances Bill, 1952.

Sir,

With reference to your letter No. 7818 dated May 10, 1952, I am directed to return herewith the authentic copy of the Bombay Ministers' Salaries and Allowances Bill 1952, with His Excellancy the Governor's assent signified thereon.

Yours faithfully,

for Secretary to the Governor of Bombay.

VGP. 3-7-56.

ACTS.

Publication of the Bombay Ministers' Salaries and Allowances Act 1952.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 7836
Bombay Castle, 10th May 1952.

Letter to the Secretary to the Governor No. 7818 ~~dated~~ dated the 10th May 1952.

Letter from the Secretary to the Governor No. G.S. 1331 dated the 10th May 1952.

RESOLUTION:- The law should be published as Bombay Act No. VII of 1952 in the Bombay Government Gazette dated the 10th May 1952.

2. The Act should be translated in to Marathi, Gujarati Kannada and Hindi (in Devnagari script) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the Political & Services Department.

By order of the Governor of Bombay.

Sd. S.L.SHAWDHARI.

Deputy Secretaryt ot Government.

To

The Manager, Government Central Press, Bombay (with a copy of the Act and with a request that 30 Gazette copies of he Act may be forwarded to the Legal Department and 10 copies to the Political & Services Department.),
The Political & Services Department,)
The Oriental Translator to Government,)
The Bombay Legislature Department,)
The Director of Publicity, Bombay,) with a copy
The Liaison Officer for the Secretariat) of the Act.
Bombay.)

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* With four extra copies of the Act.

VGP. 3-7-56.